

2013 IL App (1st) 112360-U

FIFTH DIVISION  
November 22, 2013

No. 1-11-2360

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	Nos. TM 594 234
	)	TM 594 235
	)	TM 594 236
	)	
CHRISTOPHER KUCHARZ,	)	Honorable
	)	Daniel J. Gallagher,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE McBRIDE delivered the judgment of the court.  
Presiding Justice Gordon and Justice Taylor concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not err by basing its fitness finding upon the stipulated testimony of two psychiatrists to the reports of their examinations of defendant; the court's decision was not based upon stipulations to their ultimate conclusions alone.
- ¶ 2 Following a jury trial, defendant Christopher Kucharz was convicted of driving under the influence of alcohol and sentenced to one year of conditional discharge. On appeal, defendant contends that the trial court erred in holding a fitness hearing consisting solely of the stipulated

opinions of two psychiatrists that defendant was fit for trial with medication. For the reasons stated below, we affirm.

¶ 3 Defendant was charged with reckless driving and two counts of driving under the influence of alcohol allegedly committed on northbound Lake Shore Drive near 18<sup>th</sup> Street in Chicago shortly before midnight on July 19, 2007. A charge of driving under the influence of cannabis was later added.

¶ 4 On October 2, 2007, defense counsel requested, and the court ordered, that the court's Forensic Clinical Services (FCS) conduct a behavioral clinical examination (BCX) of defendant to evaluate his fitness to stand trial.

¶ 5 In November 2007, FCS psychiatrist Dr. Peter Lourgos issued his report of his November 1<sup>st</sup> BCX finding defendant unfit to stand trial. The report consisted of a letter followed up by a more detailed psychiatric summary. Defendant was "exhibiting significant symptoms of a psychotic mental disorder," including "prominent delusions and disorganized thoughts" that "are substantially impairing his ability to rationally assist counsel in defense." Defendant admitted to receiving psychiatric treatment and antipsychotic medication, and medical records showed "a long history of mental illness with multiple psychiatric hospitalizations and outpatient treatments," rendered more difficult because he was not "compliant with his medications." He was "suffering from significant delusional ideation" including that he was arrested for " 'being in a car accident' " and had already been acquitted, and Dr. Lourgos's questioning revealed that defendant's "thought process was tangential and illogical." Dr. Lourgos recommended "further psychiatric intervention in order to attain fitness," specifically outpatient treatment, and opined that there was a reasonable probability that defendant could thereby be rendered fit within a year.

¶ 6 On March 1, 2008, the court ordered FCS to conduct a BCX of defendant to evaluate his fitness to stand trial with or without medication. In May 2008, Dr. Lourgos issued his report of

his April 21<sup>st</sup> BCX finding defendant fit to stand trial with medication. "Defendant is cognizant of the charge, understands the nature and purpose of the legal proceedings, and shows the ability to cooperate with counsel in his defense." Defendant's schizophrenia was now being treated with medication – 150 mg daily of the antipsychotic Thorazine – that he "needs to continue \*\*\* in order to maintain his fitness." On May 14, 2008, the parties stipulated to the content of Dr. Lourgos' May 2008 report and the case otherwise proceeded.

¶ 7 On November 21, 2008, defense counsel requested, and the court ordered, a new BCX. However, a written BCX order was not issued until February 10, 2009, when the court ordered FCS to conduct a BCX of defendant to evaluate his fitness to stand trial.

¶ 8 In March 2009, Dr. Lourgos issued his report of his March 16<sup>th</sup> BCX finding defendant unfit to stand trial. The report consisted of a letter accompanied by a more detailed psychiatric summary. Defendant was exhibiting severe symptoms of schizophrenia, including "illogical speech and prominent persecutory delusions" including ones related to his defense counsel and the prosecutor in his case. He was receiving outpatient psychiatric treatment and had been prescribed the antipsychotic Chlorpromazine in four daily doses of 25 mg each. While his "thought process was tangential and illogical" and his "thought content was prominent for persecutory and grandiose delusions," his "memory for recent and past events was intact." Dr. Lourgos recommended "further psychiatric intervention in order to attain fitness," specifically inpatient treatment, and opined that there was a reasonable probability that defendant could thereby be rendered fit within a year.

¶ 9 On May 4, 2009, at defense counsel's request, the court ordered FCS to conduct a BCX of defendant to evaluate his fitness to stand trial with or without medication. In June 2009, Dr. Lourgos issued his report of his June 1<sup>st</sup> BCX finding defendant unfit to stand trial. The report again consisted of a letter accompanied by a more detailed psychiatric summary. Dr. Lourgos

concluded that defendant's "mental state appeared unchanged since my previous evaluation of March 16, 2009," and he maintained his opinion that inpatient psychiatric treatment could render defendant fit for trial within a year.

¶ 10 On July 13, 2009, a fitness hearing was held: Dr. Lourgos, the sole witness, testified consistently with his March and June 2009 reports. Following arguments, the court found defendant unfit for trial and in need of inpatient treatment. On July 30, 2009, the court issued an order remanding him to the custody of the Department of Human Services (DHS) "for an evaluation on an outpatient basis."

¶ 11 In September 2009, DHS psychologist Dr. Ray Kim issued his report of his evaluation of defendant, finding him "in need of mental health services on an outpatient basis." Defendant's "speech was tangential, illogical, and rambling," and he "exhibited poor contact with reality, including paranoid and persecutory delusions, as well as grandiose delusions and loose associations." On the other hand, he "was oriented to person, place, time, and situation," his "judgment, impulse control, and frustration tolerance were fair," and he "has a good understanding of his charges and exhibited a fair understanding of the court process." It was his "delusional thinking" that rendered him unable to assist in his defense.

¶ 12 Defendant filed a motion for reconsideration of the order finding him unfit for trial with the least restrictive treatment being inpatient, challenging the latter finding based on Dr. Kim's report finding outpatient treatment appropriate. On October 7, 2009, defense counsel requested in support of that motion, and the court ordered, a BCX by FCS to evaluate defendant's fitness to stand trial with or without medication, with Dr. Lourgos specifically directed to re-evaluate him.

¶ 13 In November 2009, Dr. Lourgos issued his report of his November 12<sup>th</sup> BCX finding defendant unfit to stand trial. The report consisted of a letter referencing a psychiatric summary, though no such document is in the record. Dr. Lourgos echoed many of his findings in his earlier

reports, including defendant's "illogical speech and prominent persecutorial delusions," adding that he "refuses to accept a higher dosage of his antipsychotic medication." Dr. Lourgos opined that secure inpatient psychiatric treatment could render defendant fit for trial within a year.

¶ 14 On March 2, 2010, the court held a hearing on the motion to reconsider. Psychiatrist Dr. Lee Weiss testified that he was treating defendant on an outpatient basis since 2008. Defendant attended all appointments, was cooperative, and reported to Dr. Weiss that he was compliant with his antipsychotic medication. He was able to live on his own and in Dr. Weiss's opinion did not present a danger to himself or others. Dr. Weiss opined that outpatient treatment would be the least restrictive effective treatment for defendant. Dr. Weiss conceded that his expertise is not in forensic psychology, nor evaluating fitness to stand trial, but in treating psychiatric illness. Following argument, the court denied reconsideration, again found defendant unfit to stand trial, and ordered that he be placed in DHS custody for inpatient treatment.

¶ 15 DHS reported in May 2010 that it could restore defendant to fitness within a year pursuant to a treatment plan set out in its report. DHS reported in June 2010 that defendant was not yet fit to stand trial. In July 2010, DHS reported that defendant had been restored to fitness in the opinion of DHS staff including psychiatrist Dr. Hargurmukh Singh. The report noted that, since the June report, "there has been improvement in his psychiatric symptoms and behavior." He was now compliant with his medication, cooperative and participatory in treatment, "no longer preoccupied with his delusional beliefs," and "able to have conversations concerning his court case without expressing grandiose or persecutory delusional material." Defendant was receiving 6 mg daily of the anti-psychotic Risperidone, and he was found fit to stand trial with medication.

¶ 16 On August 10, 2010, the court ordered a BCX by FCS, with defendant to be remanded to DHS if the BCX found him unfit but remanded to the Sheriff if the BCX found him fit. FCS

reported on the same day, August 10, that defendant was examined that day by Dr. Lourgos and found fit with medication. The report contained no details or further findings – it did not identify defendant's diagnosis or medication – but stated that a fuller or more formal report would follow.

¶ 17 On August 17, 2010, the court held a stipulated fitness hearing. The opinion of Dr. Singh was read into the record; to wit, a brief summary of the findings in the July 2010 DHS report.

The opinion of Dr. Lourgos was also read into the record: that he examined defendant on August 10, and, based on that examination and a review of his records, concluded that defendant is fit to stand trial in that he is cognizant of the charges, understands the nature and purpose of the legal proceedings, and shows the ability to cooperate with counsel in his defense. Dr. Lourgos diagnosed defendant with schizophrenia, treated by 6 mg daily of Risperidal, and opined that he would need to continue the medication to remain fit. The parties stipulated to both opinions and declined to present other evidence. The court found defendant fit to stand trial with medication and reinstated his bond.

¶ 18 With nol-prossing and amendment of charges, the case went to trial on charges of driving under the influence of alcohol and driving under the combined influence of alcohol and drugs. At trial, the undisputed evidence was that defendant's car was in a one-car collision on Lake Shore Drive on July 19, 2007, and that defendant was treated at a nearby hospital (Michael Reese) and released that night. A responding police officer testified that defendant smelled of alcohol, failed three field sobriety tests that the officer administered at the hospital, and professed to be "God" and "possessed by demons," so that he arrested defendant and took a urine sample from him. Forensic scientists testified to chain of custody for the urine sample and that the urine sample tested positive for metabolites of cannabis, though the testing scientist also testified that she could not determine from the presence of such metabolites when or how much cannabis was consumed. Defendant testified, denying that he drank alcohol that night or claimed to be God,

attributing the alcohol smell to mouthwash and the crash to mechanical failure, and explaining that he was on medication for mental illness at the time of the crash. Defendant also gave incoherent testimony, including that the collision occurred at Belmont Avenue on the north side of Chicago (in contrast to near 18<sup>th</sup> Street on the south side) and that he heard multiple gunshots behind him as he drove on Lake Shore Drive. Following evidence and argument, the jury found defendant guilty of driving under the influence of alcohol but not guilty of driving under the influence of a combination of alcohol and drugs.

¶ 19 Defendant's unsuccessful post-trial motion raised no issues regarding his fitness for trial. Following arguments in aggravation and mitigation, the court sentenced defendant to one year of conditional discharge, and this appeal timely followed.

¶ 20 On appeal, defendant contends that the trial court erred in finding him fit to stand trial with medication after holding a fitness hearing consisting solely of the stipulated opinions of two psychiatrists that he was fit for trial with medication.

¶ 21 A defendant is unfit to stand trial "if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." 725 ILCS 5/104-10 (West 2010). Because fitness concerns only the ability to function in the context of a trial, a person may be fit for trial though his mind may be otherwise unsound. *People v. Taylor*, 409 Ill. App. 3d 881, 896 (2011). A defendant is generally presumed to be fit to stand trial or to plead. 725 ILCS 5/104-10 (West 2010). A defendant receiving psychotropic medication will not be presumed unfit solely on that basis. 725 ILCS 5/104-21(a) (West 2010).

¶ 22 The issue of a defendant's fitness to stand trial may be raised by the court, defense, or State at any time before, during, or after trial, and the court may order a BCX by a psychologist or psychiatrist. 725 ILCS 5/104-11(a), (b), 104-13(a) (West 2010). When the court orders a BCX and receives the report thereof, it "shall conduct a hearing to determine the issue of

defendant's fitness." 725 ILCS 5/104-16(a) (West 2010). "When a bona fide doubt of the defendant's fitness has been raised, the burden of proving that the defendant is fit by a preponderance of the evidence and the burden of going forward with the evidence are on the State." 725 ILCS 5/104-11(c) (West 2010). In a fitness hearing, relevant factors include the defendant's "knowledge and understanding of the charge, the proceedings, the consequences of a plea, judgment or sentence, and the functions of the participants in the trial process;" his "ability to observe, recollect and relate occurrences, especially those concerning the incidents alleged, and to communicate with counsel;" and his "social behavior and abilities; orientation as to time and place; recognition of persons, places and things; and performance of motor processes." 725 ILCS 5/104-16(b) (West 2010).

¶ 23 While "the court *may* call its own witnesses and conduct its own inquiry," (emphasis added)(725 ILCS 5/104-11(c) (West 2010)), no statute or supreme court rule requires that a court independently question a defendant or other witness and it is within the court's discretion not to do so. *Taylor*, 409 Ill. App. 3d at 899. The parties may stipulate to what an expert would testify, and the court may consider this stipulated testimony in reaching its fitness determination, though "fitness may not be determined solely on the parties' stipulation to the expert's *conclusions* that defendant is fit to stand trial." (Emphasis in original.) *Taylor*, 409 Ill. App. 3d at 896. "On the basis of the evidence before it, the court \*\*\* shall determine whether the defendant is fit to stand trial or to plead." 725 ILCS 5/104-16(d) (West 2010). A trial court's determination that a defendant is fit to stand trial will not be reversed absent an abuse of discretion. *Taylor*, 409 Ill. App. 3d at 896.

¶ 24 Here, the court found defendant fit to stand trial with medication on August 17, 2010, upon the stipulated opinions of two psychiatrists – Drs. Singh and Lourgos – to that effect. Dr. Singh's opinion was supported by a detailed report from DHS staff dated July 2010 and signed in



part by Dr. Singh. We consider Dr. Singh's stipulated testimony, underpinned by the July 2010 DHS report, a sufficient factual basis by themselves for the court's finding of fitness with medication. Dr. Lourgos's stipulated testimony as to his August 10<sup>th</sup> examination is fuller than the bare-bones written report of that date, in that it specifies defendant's diagnosis and medication where the report in the record does not. In sum, we conclude that the trial court did not abuse its discretion in its conduct of or decision on defendant's fitness hearing.

¶ 25 Accordingly, the judgment of the circuit court is affirmed.

¶ 26 Affirmed.